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Paper No. 24

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AUG 15 2005

**OFFICE OF PETITIONS**

In re Application of :  
Turak et al. : DECISION ON PETITION  
Application No. 09/369,508 :  
Filed: August 6, 1999 :  
Title: COMBINATION SWIMMING, :  
WALKING, RUNNING, MASSAGE, :  
THERAPEUTIC, AND RECREATIONAL :  
DEVICE :  
:

This is a decision on the RENEWED PETITION UNDER § 1.137(b) filed July 25, 2005, to revive the above-identified application. This decision also responds to the "REQUEST NOT TO ACT ON RCE," filed July 26, 2005.

The petition to revive under § 1.137(b) is **GRANTED**. However, the request not to act on the request for continued examination (RCE) is denied.

The above-identified application became abandoned for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance, mailed January 23, 2002. No extensions of time are permitted for transmitting issue fees. Applicants also failed to submit new formal drawings as required by the Notice of Allowability mailed January 23, 2002. This Notice set a three-month nonextendable period for reply. Accordingly, the above-identified application became abandoned on April 24, 2002. A courtesy Notice of Abandonment was mailed on June 10, 2002.

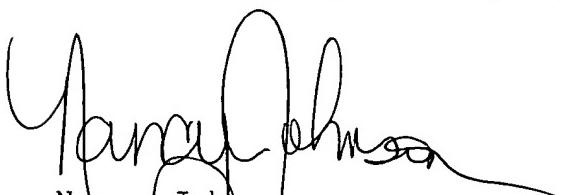
The initial petition to revive under § 1.137(b) was received in the Office on February 26, 2004. The petition included a showing, pursuant to 37 CFR § 1.8(b), that it was originally mailed on July 31, 2002. Accompanying the petition was a declaration of facts in support of the petition and a request for continued prosecution application (CPA). By decision mailed July 25, 2005, the petition was dismissed for failure to submit the required reply<sup>1</sup>. In addition, it was noted that the petition (a copy of which was being reviewed) did not appear to include the petition fee<sup>2</sup>.

On instant renewed petition, petitioner submitted the petition fee, issue fee, a request for continued examination (RCE) and fee, as well as, formal drawings. Petitioner has now met all requirements for a grantable petition under § 1.137(b).

As to the request not to act on the RCE, the RCE has been made of record and is proper. Accordingly, the request cannot be rescinded and the fee cannot be refunded. See § 1.26(a).

The application file is being returned to the examiner for consideration of the RCE, including submission under § 1.114 (the drawings) filed July 25, 2005. Petitioner is reminded that upon issuance of any new Notice of Allowance (after RCE), petitioner may request that payment of the issue fee paid to revive the application be applied (Such crediting is not automatic). A timely response to any new Notice of Allowance is required to avoid abandonment of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

<sup>1</sup> It is noted that the CPA submitted on initial petition was improper as a CPA was previously filed on August 13, 2001 (after May 29, 2000). No CPA may be filed in a utility application with a filing date after May 29, 2000.

<sup>2</sup> It is noted that payment of the petition fee is ordinarily a prerequisite to consideration of a petition under 1.137 on the merits.